

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

ZURICH AMERICAN INSURANCE COMPANY, §
Plaintiff, §
§
§

v. §

OIL TECH CONSTRUCTION, LLC,
Defendant. §
§
§

CIVIL ACTION NO. 7:24-cv-122

COMPLAINT AND JURY DEMAND

Plaintiff Zurich American Insurance Company (“Zurich”) files this Complaint against Defendant Oil Tech Construction, LLC (“Oil Tech”), and states as follows:

INTRODUCTION

1. This is a breach of contract action to recover monetary damages arising out of insurance policies entered into between Zurich and Oil Tech. Without valid excuse or justification, Oil Tech has failed to pay \$410,902.17 in principal to Zurich for unpaid premium and deductibles that are outstanding under the policies. Zurich has demanded payment from Oil Tech, but Oil Tech has failed to pay the amount owed. Substantial interest has accrued on the principal amounts due, and such interest will continue to accrue. In addition, Zurich is having to incur attorney’s fees and costs that could have been avoidable had Oil Tech simply honored its contractual commitments. Accordingly, Zurich bring this action to collect all outstanding principal and interest amounts, along with reasonable and necessary attorney’s fees incurred in collecting the obligations.

PARTIES

1. Zurich is a New York corporation engaged in the insurance business with a statutory home office located at 4 World Trade Center, 150 Greenwich Street, New York, New

York 10007, and a principal place of business located at 1299 Zurich Way, Schaumburg, Illinois 60196. Zurich is authorized to transact business and has transacted business in Texas.

2. Oil Tech is a Texas corporation with its principal place of business located at 1814 East County Road 120, Midland, Texas 79706 in Midland County, Texas.

JURISDICTION AND VENUE

3. This Court has diversity jurisdiction over this cause pursuant to 28 U.S.C. § 1332 because it is a controversy between citizens of different states and the matter in controversy, exclusive of interest and costs, exceeds \$75,000.

4. Venue is proper pursuant to 28 U.S.C. § 1391 because Oil Tech resides in Texas in this judicial district.

BACKGROUND FACTS

5. Upon information and belief, Oil Tech is a business that provides oil field services in the southwestern United States.

6. Zurich issued general liability insurance policies (“GL Policies”) and business auto insurance policies (“Auto Policies”) to Oil Tech for two relevant policy years spanning from September 3, 2021 through September 3, 2023. The GL Policies and Auto Policies are referred to collectively as the “Insurance Policies.”

A. Oil Tech Owes Zurich Additional Premium For The GL Policies.

7. Zurich issued general liability insurance policy no. GLO-05648774-00 to Oil Tech for the policy term spanning from September 3, 2021 to September 3, 2022. A true and correct copy of this policy is attached as Exhibit A.

8. Zurich issued general liability insurance policy no. GLO-05648774-01 to Oil Tech for the policy term spanning from September 3, 2022 to September 3, 2023. A true and correct copy of this policy is attached as Exhibit B.

9. In exchange for the coverage provided under these GL Policies, Oil Tech agreed to pay Zurich premium and other amounts. The parties agreed that, at the outset of each policy year, Oil Tech would pay Zurich estimated premium based on its estimated exposure for the insurance. Zurich would then conduct an audit after policy expiration to calculate the final premium based on Oil Tech's actual exposure over the course of the policy year.

10. If the final premium was greater than the estimated premium, Oil Tech was required to pay additional amounts to Zurich. If the final premium was less than the estimated premium, Zurich was required to return amounts to Oil Tech, subject to certain requirements and other conditions.

11. Zurich has fully complied with its obligation under the GL Policies. Specifically, Zurich has paid the insurance claims, performed the required audits, and calculated the final premium amounts owed. At each of the audits, Oil Tech owed additional amounts to Zurich for premium.

12. Following the audit for the 2021–2022 policy year, Oil Tech owed Zurich \$86,388.00 in additional premium for policy GLO-05648774-00.

13. Following the audit for the 2022–2023 policy year, Oil Tech owed Zurich \$29,603.00 in additional premium for policy GLO-05648774-01.

14. Zurich issued invoices to Oil Tech for the final premium amounts due following the audits (the “GL Premium Invoices”). True and correct copies of the GL Premium Invoices are attached as Exhibit C.

15. Without excuse or justification, Oil Tech has failed to comply with its obligations under the GL Policies because it failed to pay the GL Premium Invoices. Although Oil Tech acknowledged that it owes the additional premium Zurich demanded in the GL Premium Invoices, Oil Tech has failed to pay these amounts.

16. Oil Tech currently owes Zurich \$115,991.00 in principal for the unpaid premium due under the GL Policies, plus accrued interest.

B. Oil Tech Owes Zurich Additional Premium For The Auto Policies.

17. Zurich issued business auto policy no. BAP-05648779-00 to Oil Tech for the policy term spanning from September 3, 2021 to September 3, 2022. A true and correct copy of this policy is attached as Exhibit D.

18. Zurich issued business auto policy no. BAP-06571013-00 to Oil Tech for the policy term spanning from September 3, 2022 to September 3, 2023. A true and correct copy of this policy is attached as Exhibit E.

19. In exchange for the coverage provided under these Auto Policies, Oil Tech agreed to pay Zurich premium and other amounts. The parties agreed that, at the outset of each policy year, Oil Tech would pay Zurich estimated premium based on its estimated exposure for the insurance. Zurich would then conduct an audit after policy expiration to calculate the final premium based on Oil Tech's actual exposure over the course of the policy year.

20. If the final premium was greater than the estimated premium, Oil Tech was required to pay additional amounts to Zurich. If the final premium was less than the estimated premium, Zurich was required to return amounts to Oil Tech, subject to certain requirements and other conditions.

21. Zurich has fully complied with its obligation under the Auto Policies. Specifically, Zurich has paid the insurance claims, performed the required audits, and calculated the final premium amounts owed. At each of the audits, Oil Tech owed additional amounts to Zurich for premium.

22. Following the audit for the 2021–2022 policy year, Oil Tech owed Zurich \$48,575.11 in premium for policy no. BAP-05648779-00.

23. Following the audit for the 2022–2023 policy year, Oil Tech owed Zurich \$62,173.45 in premium for policy no. BAP-06571013-00.

24. Zurich issued invoices to Oil Tech for the final premium amounts due following the audits (the “Auto Premium Invoices”). True and correct copies of the Auto Premium Invoices are attached as Exhibit F.

25. Without excuse or justification, Oil Tech has failed to comply with its obligations under the Auto Policies because it failed to pay the Auto Premium Invoices. Oil Tech currently owes Zurich \$110,748.56 in principal for unpaid premium due under the Auto Policies, plus accrued interest.

C. Oil Tech Owes Zurich Additional Deductibles For The Auto Policies.

26. Additionally, for the 2022–2023 policy year, under policy no. BAP-06571013-00, Oil Tech assumed a deductible obligation. Oil Tech agreed to be responsible for the first \$100,000 of losses and expenses incurred per accident for liability claims.

27. Zurich has fully complied with its obligations under the policies by paying the insurance claims. Zurich then issued invoices to Oil Tech that reflect the deductible amounts that Oil Tech is obligated to pay for the claims (the “Auto Deductible Invoices”). True and correct copies of the Auto Deductible Invoices are attached as Exhibit G.

28. Without excuse or justification, Oil Tech has failed to comply with its obligations under the Auto Policies because it failed to pay the Auto Deductible Invoices. Oil Tech currently owes Zurich \$184,162.61 in principal for unpaid deductibles due under the Auto Policies, plus accrued interest.

D. Oil Tech Owes Zurich For Accrued Interest.

29. Apart from and in addition to the principal amounts, Oil Tech owed Plaintiff for accrued interest due on the unpaid invoices. Under Texas law, prejudgment interest is mandatory for breaches of a contract and begins to accrue on the earlier of 180 days after the defendant receives written notice of the claim, or the date the suit is filed, at the prime rate. Tex. Fin. Code §§ 304.003 and 304.104.

30. The current prime rate as published by the Federal Reserve Board of Governors is 8.5%. Applying this rate to the outstanding amounts under the above standards, Oil Tech currently owes Zurich more than \$7,000 in accrued interest, and interest will continue to accrue.

E. Zurich is Forced to Incur fees and File Litigation.

31. Zurich presented its claims for payment of amounts owed under the contracts to Oil Tech. Despite acknowledging that some or all of the money sought was due and owing, Oil Tech still has not paid Zurich. Oil Tech's failure to pay has caused Zurich to incur attorney's fees and costs, which continue to mount.

32. Zurich has complied with all conditions precedent to bring the below claims and obtain the relief requested.

FIRST CAUSE OF ACTION

(Breach of Contract Under Policy No. GLO-05648774-00)

33. Zurich repeats and realleges the allegations of paragraphs 1 through 32 above, as if fully set forth herein.
34. This is a breach of contract claim brought by Zurich.
35. Policy No. GLO-05648774-00 is a valid and enforceable contract.
36. Zurich has fully performed its obligations under this policy by providing insurance coverage and other benefits to Oil Tech.
37. Oil Tech has received the insurance coverage and other benefits provided under this policy.
38. This policy requires Oil Tech to pay Zurich additional premium in the principal amount of \$86,388.00, as stated in the GL Premium Invoices.
39. Zurich has sent the GL Premium Invoices to Oil Tech, and Zurich has demanded payment for the amounts due.
40. Without excuse or justification, Oil Tech has breached this policy by failing to pay the amounts owed.
41. Zurich has suffered substantial damages due to Oil Tech's breach of the policy and failure to pay the required amounts.
42. **WHEREFORE**, Zurich prays for judgment in its favor and against Oil Tech as follows:
 - a) Finding that Oil Tech is liable to Zurich for \$86,388.00 in unpaid premium due under Policy No. GLO-05648774-00;

- b) Finding that Oil Tech is liable for prejudgment interest accruing on this unpaid premium; and
- c) Granting Zurich such other and further relief as this Court deems just and proper.

SECOND CAUSE OF ACTION

(Breach of Contract Under Policy No. GLO-05648774-01)

43. Zurich repeats and realleges the allegations of paragraphs 1 through 42 above, as if fully set forth herein.

44. This is a breach of contract claim brought by Zurich.

45. Policy No. GLO-05648774-01 is a valid and enforceable contract.

46. Zurich has fully performed its obligations under this policy by providing insurance coverage and other benefits to Oil Tech.

47. Oil Tech has received the insurance coverage and other benefits provided under this policy.

48. This policy requires Oil Tech to pay Zurich additional premium in the principal amount of \$29,603.00, as stated in the GL Premium Invoices.

49. Zurich has sent the GL Premium Invoices to Oil Tech, and Zurich has demanded payment for the amounts due.

50. Without excuse or justification, Oil Tech has breached the GL Policies by failing to pay the amounts due.

51. Zurich has suffered substantial damages due to Oil Tech's breach of the policy and failure to pay the required amounts.

52. **WHEREFORE**, Zurich prays for judgment in its favor and against Oil Tech as follows:

- a) Finding that Oil Tech is liable to Zurich for \$29,603.00 in unpaid premium due under Policy No. GLO-05648774-01;
- b) Finding that Oil Tech is liable for prejudgment interest accruing on this unpaid premium; and
- c) Granting Zurich such other and further relief as this Court deems just and proper.

THIRD CAUSE OF ACTION

(Breach of Contract Under Policy No. BAP-05648779-00)

53. Zurich repeats and realleges the allegations of paragraphs 1 through 52 above, as if fully set forth herein.

54. This is a breach of contract claim brought by Zurich.

55. Policy No. BAP-05648779-00 is a valid and enforceable contract.

56. Zurich has fully performed its obligations under this policy by providing insurance coverage and other benefits to Oil Tech.

57. Oil Tech has received the insurance coverage and other benefits provided under this policy.

58. This policy requires Oil Tech to pay Zurich additional premium in the principal amount of \$48,575.11, as stated in the Auto Premium Invoices.

59. Zurich has sent the Auto Premium Invoices to Oil Tech, and Zurich has demanded payment for the amounts due.

60. Without excuse or justification, Oil Tech has breached this policy by failing to pay the amounts due.

61. Zurich has suffered substantial damages due to Oil Tech's breach of the policy and failure to pay the required amounts.

62. **WHEREFORE**, Zurich prays for judgment in its favor and against Oil Tech as follows:

- a) Finding that Oil Tech is liable to Zurich for \$48,575.11 in unpaid premium due under Policy No. BAP-05648779-00;
- b) Finding that Oil Tech is liable for prejudgment interest accruing on this unpaid premium; and
- c) Granting Zurich such other and further relief as this Court deems just and proper.

FOURTH CAUSE OF ACTION

(Breach of Contract Under Policy No. BAP-06571013-00)

63. Zurich repeats and realleges the allegations of paragraphs 1 through 62 above, as if fully set forth herein.

64. This is a breach of contract claim brought by Zurich.

65. Policy No. BAP-06571013-00 is a valid and enforceable contract.

66. Zurich has fully performed its obligations under this policy by providing insurance coverage and other benefits to Oil Tech.

67. Oil Tech has received the insurance coverage and other benefits provided under this policy.

68. This policy requires Oil Tech to pay Zurich additional premium in the principal amount of \$62,173.45, as stated in the Auto Premium Invoices.

69. This policy also requires Oil Tech to pay Zurich additional deductibles in the principal amount of \$184,162.61, as stated in the Auto Deductible Invoices.

70. Zurich has sent the Auto Premium Invoices and Auto Deductible Invoices to Oil Tech, and Zurich has demanded payment for the amounts due.

71. Without excuse or justification, Oil Tech has breached this policy by failing to pay the amounts due.

72. Zurich has suffered substantial damages due to Oil Tech's breach of the policy and failure to pay the required amounts.

73. **WHEREFORE**, Zurich prays for judgment in its favor and against Oil Tech as follows:

- a) Finding that Oil Tech is liable to Zurich for \$62,173.45 in unpaid premium due under Policy No. BAP-06571013-00;
- b) Finding that Oil Tech is liable to Zurich for \$184,162.61 in unpaid deductibles due under Policy No. BAP-06571013-00;
- c) Finding that Oil Tech is liable for prejudgment interest accruing on this unpaid premium and deductibles; and
- d) Granting Zurich such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demand trial by jury on all issues so triable.

PRAAYER

For the foregoing reasons, Plaintiff Zurich American Insurance Company prays that the Court enter judgment awarding actual damages in the amount due and owing on the contracts, including, but not limited to, all premium, unpaid deductibles, and interest; attorney's fees under Chapter 38 of the Texas Civil Practice and Remedies or as otherwise allowed by law; costs and other reasonable expenses; pre-and post-judgment interest; and any further relief to which Zurich may show itself entitled.

Dated: May 13, 2024

Respectfully submitted,

/s/ B. David L. Foster

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